

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division

JONATHAN CRAWFORD, #304936,

Petitioner,

v.

ACTION NO.
2:04cv725

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254.

The petition alleges violation of petitioner's constitutional rights pertaining to his convictions for rape and malicious wounding, in the Circuit Court of the County of Mecklenburg, as a result of which he was sentenced on December 12, 2001, to serve fifteen years in the Virginia penal system.

The petition was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. Report of the Magistrate Judge was filed on June 22, 2005, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. Petitioner did not follow this procedure. Instead, he filed a premature appeal of the case to the Court of Appeals for the Fourth Circuit. That appeal was denied and remanded to this court by Judgment filed October 31, 2005, in the Court of Appeals for the Fourth Circuit. The mandate was received by this court's Clerk on November 23, 2005. By Order entered November

30, 2005, the court allowed the petitioner until December 22, 2005 to file objections to the report and recommendation. The Court has received no objections to the United States Magistrate Judge's Report and Recommendation and the time for filing same has expired.

The Court does hereby accept the findings and recommendations set forth in the report of the United States Magistrate Judge filed June 22, 2005, and it is therefore ORDERED that the petition be DENIED and DISMISSED and that judgment be entered in favor of the respondent.

To the extent the petition is based on Grounds (a) and (b), it is DENIED because they were previously adjudicated by the Supreme Court of Virginia on the merits and based on the holding in Strickland and none of the statutory exceptions apply that would allow this Court to review the claims on the merits.

To the extent the petition is based on Grounds (c) and (d), it is DENIED because they were procedurally barred from review in the state courts and thus, may not now be considered in this Court.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 30 days from the date of entry of such judgment.

Petitioner has failed to demonstrate “a substantial showing of the denial of a constitutional right,” therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to the petitioner and to counsel of record for the respondent.

_____/s/_____
WALTER D. KELLEY, JR.
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
January 4 , 2006